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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,815	09/18/2003	Kevin W. Shimasaki	81009/7400	6622

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FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER

MCPARTLIN, SARAH BURNHAM

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 09/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/665,815	<b>Applicant(s)</b> SHIMASAKI ET AL.	
	<b>Examiner</b> Sarah B. McPartlin	<b>Art Unit</b> 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on June 30, 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 5-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 8, 9, 11, 13-15 and 17-20 is/are rejected.
- 7) ☒ Claim(s) 7, 10, 12 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8-9, 11, and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Beroth (6,352,309). With respect to claim 8, Beroth discloses an apparatus (10) for use in sitting in a vehicle for travel, comprising: a base (11); a back (20) secured with the base (11); a seat pan (22)(28) secured with the base (11); the seat pan (22)(28) includes a first portion (28) and a second portion (22), wherein the first portion (28) is configured to pivot relative to the second portion (22) by way of pivot (29), such that the first portion (28) pivots allowing a distal end of the first portion (28) positioned away from the second portion (22) to pivot so that the distal end can be moved out of relative alignment with the second portion (22), wherein movement of the second portion (22) of the seat pan (22)(28) causes a change in an angle defined between the backrest (20) and the second portion (22). Note, Figure 1 shows the first portion (28) in alignment with the second portion (22) and Figure 6 shows the first portion (28) out of alignment with the second portion (22).

With respect to claim 9, the seat pan (22)(28) is movably secured with the base (11) wherein the seat pan (22)(28) moves generally horizontal, as defined by slot (17) relative to the base (11).

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With respect to claim 11, the back (20) includes a back frame (unlabeled) pivotably secured at picot (25) with the base (11) such that the back (20) pivots at the second pivot point (25) causing an upper portion of the back (20) to move in a first direction (i.e. rearward) when a force exceeding a predefined level is applied to the back in the first direction.

With respect to claim 19, the seat pan (22)(28) is configured such that the first portion (28) is configured to pivot about perpendicular relative to the second portion (22).

With respect to claim 20, (28) pivots in response to movement of the second portion (22) given that "the bolster 28 moves between these two positions by articulating about a pivot 29 under control of a motor (not shown) during movement among seating positions" (column 3, lines 45-48).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-6, 8-9, 13-14 and 19 are rejected under 35 U.S.C. 103(a) as being anticipated by Malitte (3,572,829) in view of Lohr (3,632,166). Malitte discloses an apparatus (Figure 1) for use in sitting in a vehicle for travel comprising: a base (1)(2), a seat pan (8) moveably secured with the base (1)(2); and a backrest (7) moveably

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secured with the base (1)(2). The seat pan (8) is moveably secured with the base (1)(2) such that the seat pan (8) moves generally horizontal relative to the base (1)(2) as defined by slot (4). The backrest (7) is moveably secured with the base (1)(2) such that a lower portion (unlabeled) of the backrest (7) pivots at pivot point (10) as the seat pane (8) is moved. A first track (4) is fixed with the base (1)(2), wherein the seat pan (8) is mounted with the first rack (4) such that the seat pan (8) is moveably secured with the base (1)(2) allowing the seat pan (8) to slide along the first track (4). Malitte discloses all claimed elements with the exception of a seat pan having a first portion and a second portion.

Lohr discloses a seat pan (16)(18) moveably secured with the base (10); and a back rest (20) moveably secured with the base (10); the seat pan (16)(18) includes a first portion (16) and a second portion (18), wherein the first portion (16) is rotationally secured relative to the second portion (18), such that the first portion (16) can be rotationally positioned in a plurality of positions (see phantom and solid line depictions of three various positions in Figure 1) relative to the second portion (18) and wherein the first portion (16) is rotationally secured such that in a first position (i.e. solid line depiction in Figure 1) the first portion (16) of the seat pan (16)(18) is in alignment with the second portion (18) and in a second position (i.e. lowered phantom line depiction in Figure 1) the first portion (16) is out of alignment with the second portion (18) such that a distal end (unlabeled) of the first portion (16) located furthest from the second portion (18) is below a proximal end of the first portion (16) proximate the second portion (18).

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The first portion (16) is rotationally secured such that in a third position (i.e. the raised phantom line depiction in Figure 1) the first portion (16) is out of alignment with the second portion (18) such that the distal end is above the proximal end proximate the second portion (18). The first portion (16) of the seat pan (16)(18) pivots such that the distal end extends above the second portion (18) of the seat pan. The seat pan (16)(18) is configured such that the first portion (16) is configured to pivot about perpendicular to the second portion (18).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to add a first portion (16) as taught by Lohr to the seat pan (8) disclosed by Malitte. Such an addition would provide support for the upper legs and thighs of the seat occupant (column 2, lines 32-33) thereby improving the comfort of the seat occupant.

1. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malitte (3,572,829) in view of Lohr (3,632,166), as applied to claim 1 above, and in further view of Veneruso (6,641,214). As disclosed above, Malitte, as modified, discloses all claimed elements with the exception of a back frame.

Veneruso discloses a back frame (2) pivoted at a second pivot point (8) to a base (4) such that the back pivots at the second pivot point causing an upper portion of the back to move in a first direction (i.e. rearward as defined by lot (5) when a force exceeding a predefined levels is applied to the back in the first direction.

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It would have been obvious to one of ordinary skill in the art at the time of the instant invention to add frame members (2) as taught by Veneruso to the back (7) disclosed by Malitte. Such a modification would improve the strength of the attachment between the base (1)(2) and the back (70) by providing a rigid attachment structure in the form of a frame member.

2. Claims 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bentley (6,742,840).

With respect to claim 15, Bentley discloses a first portion (42) of a seat pan (90)(42) pivotably secured to a base (22) by way of a second portion (90) of the seat pan (90)(42) which is movable secured to the base to move along an axis defined by slot (126); a back frame (1) provides support for the backrest (14) and is secured to the base (22) and as best seen in Figures 1A-1C; and pivotably securing a backrest (14) with the back frame (unlabeled), in the form of a structure with downwardly extending tabs for attaching to base frame (22), by way of second portion (90) and rollers (122) and (118) such that a lower portion of the back rest pivots as the second portion (90) of the seat pan (90)(42) is moved along the axis defined by slot (126).

With respect to claim 17, the first portion (42) of the seat pan (90)(42) is secured to the base (22) such that it can pivot out of alignment (see Figure 5) with the second portion (90).

Bentley discloses all claimed elements without the specific method of use steps. It would have been obvious to deduce the specifically claimed method steps of securing

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the elements together given the fact that the elements need to be secured in order to perform the intended function of the device. The structure disclosed by Bentley makes the method of use steps obvious.

3. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bentley (6,742,840) in view of Beroth (6,352,309). Bentley discloses all claimed elements with the exception of a backrest frame rotationally secured to the base.

Beroth discloses a backrest (20) with a frame (unlabeled) pivotally secured to a base (15) at pivot point (25) while the backrest (20) is pivotally secured to the base by way of pivot (23).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to add a pivotal connection between the back frame and the base in the device disclosed by Bentley as taught by Beroth. Such a modification allows for an additional degree of freedom creating more adjustability of the seat for the occupant.

4. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malitte (3,572,829) in view of Lohr (3,632,166), and in further view of Beroth (6,352,309). Lohr discloses all claimed elements with the exception of a backrest frame rotationally secured to the base.

Beroth discloses a backrest (20) with a frame (unlabeled) pivotally secured to a base (15) at pivot point (25) while the backrest (20) is pivotally secured to the base by way of pivot (23).



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It would have been obvious to one of ordinary skill in the art at the time of the instant invention to add a pivotal connection between the back frame and the base in the device disclosed by Bentley as taught by Beroth. Such a modification allows for an additional degree of freedom creating more adjustability of the seat for the occupant.

***Allowable Subject Matter***

5. Claims 7, 10, 12 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Amendment/Arguments***

6. The amendment filed on June 30, 2006 has been considered in its entirety.

Remaining issues are detailed in the sections above.

Applicant argues that Lohr does not disclose a seat where the movement of the second portion of the seat pan causes a change in the angle between the backrest and the second portion. In the above rejection above, Malitte is relied upon to show this claimed relationship between the second portion of the seat pan and the backrest. Malitte shows how the forward movement of the seat pan creates a rearward reclining movement in the seat back. The addition of the thigh support member disclosed by Lohr creates a seat with improved comfort and the combination would appear to meet all of the claim limitations.

Applicant argues that Bentley does not teach at least pivotably securing a backrest with the back frame such that a lower portion of the backrest pivots as the second portion of the seat pan is moved. Figures 1A through 1C would appear to best disclose this relationship. A back frame, in the form of a substantially L-shaped member is attached to the base (22). The backrest (14) pivots with respect to the back frame. This pivoting motion can be seen by comparing the three figures. In Figure 1A, the backrest (14) is shown pivoting rearward with respect to the frame. Figure 2 shows the backrest pivoted rearward and the seat pan pivoted upward. Because of the fixed relationship between the second portion of the seat pan and the backrest, the backrest would necessarily pivot with respect to the backrest frame in order for the seat pan to reorient as shown in Figure 1B. The Examiner recognizes that the bottom is both multi

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part and lacking any hinge. However, claim 15 does not require that the backrest, second part and first part of the seat pan change angles with respect to each other.

The arguments with respect to claim 7, 12 and 16 are moot. These claims have been indicated above as being allowable if rewritten in independent form.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah B. McPartlin whose telephone number is 571-272-6854. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SBM  
September 7, 2006

  
**Peter M. Cuomo**  
Supervisory Patent Examiner  
Technology Center 3600